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HOUSE BILL 79

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO LICENSURE; DESCRIBING OCCUPATIONAL THERAPY SERVICES; EXPANDING QUALIFICATIONS FOR PROFESSIONAL MEMBERSHIP ON THE BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY; MAKING THE BOARD AN ADJUNCT AGENCY; CHANGING POWERS AND DUTIES; CHANGING LICENSURE REQUIREMENTS; EXTENDING AGENCY LIFE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-12A-1 NMSA 1978 (being Laws 1996, Chapter 55, Section 1) is amended to read:

"61-12A-1. SHORT TITLE. -- ~~[This act]~~ Chapter 61, Article 12A NMSA 1978 may be cited as the "Occupational Therapy Act". "

Section 2. Section 61-12A-2 NMSA 1978 (being Laws 1996, Chapter 55, Section 2) is amended to read:

"61-12A-2. PURPOSE. -- It is the purpose of the Occupational Therapy Act to provide for the regulation of

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1 persons offering occupational therapy services to the public in
2 order to safeguard the public health, safety and welfare; to
3 protect the public from being misled by incompetent and
4 unauthorized persons; to assure the highest degree of
5 professional conduct on the part of [registered] occupational
6 therapists and [certified] occupational therapy assistants; and
7 to assure the availability of occupational therapy services of
8 high quality to persons in need of such services. "

9 Section 3. Section 61-12A-3 NMSA 1978 (being Laws 1996,
10 Chapter 55, Section 3) is amended to read:

11 "61-12A-3. DEFINITIONS. -- As used in the Occupational
12 Therapy Act:

13 A. "board" means the board of examiners for
14 occupational therapy;

15 B. "censure" means a formal expression of
16 disapproval that is publicly announced;

17 [~~C. "certified occupational therapy assistant"~~
18 ~~means a person having no less than an associate degree in~~
19 ~~occupational therapy who is certified by the American~~
20 ~~occupational therapy certification board and licensed in New~~
21 ~~Mexico to assist a registered occupational therapist in~~
22 ~~occupational therapy under the supervision of the registered~~
23 ~~occupational therapist;~~

24 ~~D.]~~ C. "denial of license" means that a person is
25 barred from becoming licensed to practice in accordance with

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1 the provisions of the Occupational Therapy Act either
2 indefinitely or for a certain period;

3 ~~[E.]~~ D. "licensee" means ~~[a registered]~~ an
4 occupational therapist or ~~[certified]~~ occupational therapy
5 assistant, as appropriate;

6 E. "occupational therapist" means a person who
7 holds an active license to practice occupational therapy in New
8 Mexico;

9 F. "occupational therapy" means the therapeutic use
10 of ~~[purposeful activity or intervention designed to achieve~~
11 ~~functional outcomes that promote health, prevent injury or~~
12 ~~disability and develop, improve, sustain or restore to the~~
13 ~~highest possible level of independence a person who has an~~
14 ~~injury, illness, psychosocial dysfunction, mental illness,~~
15 ~~developmental or learning disability, physical disability or~~
16 ~~other disorder or condition]~~ everyday life activities with
17 persons or groups to participate in roles and situations in
18 home, school, workplace, community and other settings to
19 promote health and wellness in clients who have or are at risk
20 for developing an illness, injury, disease, disorder,
21 condition, impairment, disability, activity limitation or
22 participation restriction. "Occupational therapy" includes
23 addressing the physical, cognitive, psychosocial, sensory and
24 other aspects of performance in a variety of contexts to
25 support a client's engagement in everyday life activities that

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1 affect health, well-being and quality of life;

2 G. "occupational therapy aide or technician" means
3 an unlicensed person who assists in occupational therapy, who
4 works under direct supervision of [~~a registered~~] an
5 occupational therapist or [~~certified~~] occupational therapy
6 assistant;

7 H. "occupational therapy assistant" means a person
8 having no less than an associate degree in occupational therapy
9 and holding an active license to practice occupational therapy
10 in New Mexico who assists an occupational therapist under the
11 supervision of the occupational therapist;

12 [~~H.~~] I. "person" means an individual, association,
13 partnership, unincorporated organization or corporate body;

14 [~~I.~~] J. "probation" means continued licensure is
15 subject to fulfillment of specified conditions such as
16 monitoring, education, supervision or counseling;

17 [~~J.~~] ~~"registered occupational therapist" means a~~
18 ~~person having no less than a baccalaureate degree in~~
19 ~~occupational therapy who is registered by the American~~
20 ~~occupational therapy certification board and licensed in New~~
21 ~~Mexico to practice occupational therapy;]~~

22 K. "reprimand" means a formal expression of
23 disapproval that [~~shall be~~] is retained in the licensee's file
24 but [~~shall~~] not [~~be~~] publicly announced;

25 L. "revocation" means permanent loss of licensure;

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1 and

2 M "suspension" means the loss of licensure for a
3 certain period, after which the person may be required to apply
4 for reinstatement. "

5 Section 4. Section 61-12A-4 NMSA 1978 (being Laws 1996,
6 Chapter 55, Section 4) is repealed and a new Section 61-12A-4
7 NMSA 1978 is enacted to read:

8 "61-12A-4. [NEW MATERIAL] OCCUPATIONAL THERAPY
9 SERVICES. -- Occupational therapy services include:

10 A. selected strategies to direct the process of
11 interventions, such as:

12 (1) establishment, remediation or restoration
13 of a skill or ability that has not yet developed or is
14 impaired;

15 (2) compensation, modification or adaptation
16 of activity or environment to enhance performance;

17 (3) maintenance and enhancement of
18 capabilities without which performance in everyday life
19 activities would decline;

20 (4) health promotion and wellness to enable
21 enhanced performance in everyday life activities; and

22 (5) prevention of barriers to performance,
23 including disability prevention;

24 B. evaluation of factors affecting activities of
25 daily living, instrumental activities of daily living,

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1 education, work, play, leisure and social participation,
2 including:

3 (1) client factors, including neuromuscular,
4 sensory, visual, perceptual and cognitive functions and
5 cardiovascular, digestive, integumentary and genitourinary
6 systems;

7 (2) habits, routines, roles and behavior
8 patterns;

9 (3) cultural, physical, environmental, social
10 and spiritual contexts and activity demands that affect
11 performance; and

12 (4) performance skills, including motor,
13 process and communication and interaction skills; and

14 C. interventions and procedures to promote or
15 enhance safety and performance in activities of daily living,
16 instrumental activities of daily living, education, work, play,
17 leisure and social participation, including:

18 (1) therapeutic use of occupations, exercises
19 and activities;

20 (2) training in self-care, self-management,
21 home management and community-work reintegration;

22 (3) development, remediation or compensation
23 of physical, cognitive, neuromuscular and sensory functions and
24 behavioral skills;

25 (4) therapeutic use of self, including one's

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1 personality, insights, perceptions and judgments, as part of
2 the therapeutic process;

3 (5) education and training of persons,
4 including family members, caregivers and others;

5 (6) care coordination, case management and
6 transition services;

7 (7) consultative services to groups,
8 programs, organizations or communities;

9 (8) modification of environments and
10 adaptation or processes, including the application of ergonomic
11 principles;

12 (9) assessment, design, fabrication,
13 application, fitting and training in assistive technology,
14 adaptive devices and orthotic devices and training in the use
15 of prosthetic devices;

16 (10) assessment, recommendation and training
17 in techniques to enhance functional mobility, including
18 wheelchair management;

19 (11) driver rehabilitation and community
20 mobility;

21 (12) management of feeding, eating and
22 swallowing to enable eating and feeding performance; and

23 (13) application of physical agent modalities
24 and use of a range of specific therapeutic procedures such as
25 wound care management; techniques to enhance sensory,

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1 perceptual and cognitive processing; and manual therapy
2 techniques to enhance performance skills."

3 Section 5. Section 61-12A-5 NMSA 1978 (being Laws 1996,
4 Chapter 55, Section 5) is amended to read:

5 "61-12A-5. SUPERVISION--REQUIRED--DEFINED.--

6 A. ~~[No]~~ Occupational therapy shall not be performed
7 by ~~[any certified]~~ an occupational therapy assistant,
8 occupational therapy aide or technician or by any person
9 practicing on a provisional permit unless such therapy is
10 supervised by ~~[a registered]~~ an occupational therapist. The
11 board shall adopt ~~[regulations]~~ rules defining supervision,
12 which definitions may include various categories such as "close
13 supervision", "routine supervision" and "general supervision".

14 B. An occupational therapy aide or technician is
15 not a primary service provider of occupational therapy in any
16 practice setting and, therefore, does not provide skilled
17 occupational therapy services. An occupational therapy aide or
18 technician is trained by an occupational therapist or an
19 occupational therapy assistant to perform specifically
20 delegated tasks, and the occupational therapist is responsible
21 for the overall use and actions of the occupational therapy
22 aide or technician. An occupational therapy aide or technician
23 must demonstrate competence to perform the assigned, delegated
24 client and nonclient tasks."

25 Section 6. Section 61-12A-6 NMSA 1978 (being Laws 1996,

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1 Chapter 55, Section 6) is amended to read:

2 "61-12A-6. LICENSE REQUIRED. --

3 A. Unless licensed to practice the level of
4 occupational therapy provided in the Occupational Therapy Act,
5 [~~no~~] a person shall not practice as [~~a registered~~] an
6 occupational therapist or [~~certified~~] occupational therapy
7 assistant.

8 B. It is unlawful for [~~any~~] a person not licensed
9 pursuant to the Occupational Therapy Act or whose license has
10 been denied, suspended or revoked in this or another state to
11 hold himself out as [~~a registered~~] an occupational therapist or
12 [~~certified~~] occupational therapy assistant or to use words or
13 titles containing "occupational therapist" [~~"registered~~
14 ~~occupational therapist"~~] or "occupational therapy assistant"
15 [~~or "certified occupational therapy assistant"~~] that would
16 indicate or imply that the person is licensed as [~~a registered~~]
17 an occupational therapist or [~~certified~~] occupational therapy
18 assistant.

19 C. [~~No~~] A facility or employer shall not represent
20 that it offers occupational therapy unless it [~~utilizes~~] uses
21 the services of a licensee pursuant to the provisions of the
22 Occupational Therapy Act.

23 D. A person offering or assisting in the offering
24 of occupational therapy shall be properly identified by a name
25 badge or other identification indicating whether [~~he~~] the

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1 person is [~~a registered~~] an occupational therapist, [~~certified~~]
2 an occupational therapy assistant, an occupational therapy aide
3 or technician or a person practicing under a provisional
4 permit. "

5 Section 7. Section 61-12A-8 NMSA 1978 (being Laws 1996,
6 Chapter 55, Section 8, as amended) is amended to read:

7 "61-12A-8. BOARD CREATED. --

8 A. The "board of examiners for occupational
9 therapy" is created.

10 [~~B. The board shall be administratively attached to~~
11 ~~the regulation and licensing department.~~

12 ~~C.] B.~~ The board shall consist of five members
13 appointed by the governor who have been residents of the state
14 for at least two years preceding the appointment.

15 [~~D.] C.~~ Three members shall be licensed under the
16 provisions of the Occupational Therapy Act; have a minimum of
17 five years' professional experience, with two years' experience
18 in New Mexico; and have not had their licenses suspended or
19 revoked by this or any other state. One of the professional
20 members may be [~~a certified~~] an occupational therapy assistant
21 and one of the professional members may be a retired
22 [~~registered~~] occupational therapist or occupational therapy
23 assistant, who has been retired for no more than five years at
24 the time of appointment.

25 [~~E.] D.~~ Two members shall represent the public.

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1 The two public members shall have no direct interest in the
2 profession of occupational therapy. The public members shall
3 not:

4 (1) have been convicted of a felony;

5 (2) be habitually intemperate or be addicted
6 to the use of habit-forming drugs or be addicted to [a] any
7 other vice to such a degree as to render [~~him~~] the member unfit
8 to fulfill his board duties and responsibilities; or

9 (3) be guilty of a violation of the Controlled
10 Substances Act.

11 [~~F.~~] E. Appointments shall be made for staggered
12 terms of three years with no more than two terms ending at any
13 one time. A board member shall not serve more than two
14 consecutive terms. Vacancies shall be filled for the unexpired
15 term by appointment by the governor prior to the next scheduled
16 board meeting.

17 [~~G.~~] F. An individual member of the board shall not
18 be liable in a civil or criminal action for an act performed in
19 good faith in the execution of his duties as a member of the
20 board.

21 [~~H.~~] G. Members of the board shall be reimbursed
22 for per diem and travel expenses as provided in the Per Diem
23 and Mileage Act and shall receive no other compensation,
24 perquisite or allowance.

25 [~~I.~~] H. A simple majority of the board members

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1 currently serving shall constitute a quorum of the board for
2 the conduct of business.

3 [~~J-~~] I. The board shall meet at least four times a
4 year and at other times as it deems necessary. Additional
5 meetings may be convened at the call of the president of the
6 board or on the written request of any two board members to the
7 president. Meetings of the board shall be conducted in
8 accordance with the provisions of the Open Meetings Act.

9 [~~K-~~] J. A member failing to attend three
10 consecutive meetings, unless excused as provided by board
11 policy, shall automatically be recommended for removal as a
12 member of the board.

13 [~~L-~~] K. At the beginning of each fiscal year, the
14 board shall elect a president, vice president and secretary-
15 treasurer. "

16 Section 8. Section 61-12A-9 NMSA 1978 (being Laws 1996,
17 Chapter 55, Section 9, as amended) is amended to read:

18 "61-12A-9. BOARD--POWERS AND DUTIES. --

19 A. The board shall:

20 (1) adopt, file, amend or repeal rules [~~and~~
21 ~~regulations~~] in accordance with the Uniform Licensing Act to
22 carry out the provisions of the Occupational Therapy Act;

23 (2) use funds for the purpose of meeting the
24 necessary expenses incurred in carrying out the provisions of
25 the Occupational Therapy Act;

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- 1 (3) adopt a code of ethics;
- 2 (4) enforce the provisions of the Occupational
- 3 Therapy Act to protect the public by conducting hearings on
- 4 charges relating to the discipline of licensees, including the
- 5 denial, suspension or revocation of a license;
- 6 (5) establish and collect fees;
- 7 (6) provide for examination for and issuance,
- 8 renewal and reinstatement of licenses;
- 9 (7) establish, impose and collect fines for
- 10 violations of the Occupational Therapy Act;
- 11 (8) appoint a registrar to keep records and
- 12 minutes necessary to carry out the functions of the board; and
- 13 (9) obtain the legal assistance of the
- 14 attorney general.

15 B. The board may:

- 16 (1) issue investigative subpoenas for the
- 17 purpose of investigating complaints against licensees prior to
- 18 the issuance of a notice of contemplated action;
- 19 (2) hire or contract with an investigator to
- 20 investigate complaints that have been filed with the board.
- 21 The board shall set the compensation of the investigator to be
- 22 paid from the funds of the board;
- 23 (3) inspect establishments; [and]
- 24 (4) designate hearing officers;
- 25 (5) employ and discharge such employees as it

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1 deems necessary and shall determine their duties and set their
2 compensation; and

3 (6) hire or contract with an attorney to give
4 advice in regard to any matter connected with the duties of the
5 board, to represent the board in any legal proceedings and to
6 aid in the enforcement of the Occupational Therapy Act. The
7 board shall set the compensation of the attorney to be paid
8 from the funds of the board. "

9 Section 9. Section 61-12A-10 NMSA 1978 (being Laws 1996,
10 Chapter 55, Section 10, as amended) is amended to read:

11 "61-12A-10. BOARD--ADMINISTRATIVE PROCEDURES.--The board
12 shall appoint a registrar who is either the board member
13 elected as the secretary-treasurer or [~~such other~~] another
14 person as the board may designate who is an employee of the
15 [~~state~~] board. The registrar of the board may receive
16 reimbursement for necessary expenses incurred in carrying out
17 his duties and, if he is an employee, such compensation as the
18 board may set. The registrar shall keep a written record in
19 which shall be registered the name, license number, date of
20 license issuance, current address, record of annual license fee
21 payments, minutes and any other data as the board deems
22 necessary regarding licensees. "

23 Section 10. Section 61-12A-11 NMSA 1978 (being Laws 1996,
24 Chapter 55, Section 11) is amended to read:

25 "61-12A-11. REQUIREMENTS FOR LICENSURE.--

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1 A. ~~[A license to practice as a registered~~
2 ~~occupational therapist or a certified occupational therapy~~
3 ~~assistant shall be issued to any person who files a completed~~
4 ~~application]~~ An applicant applying for a license as an
5 occupational therapist or occupational therapy assistant shall
6 file a written application provided by the board, accompanied
7 by the required fees and documentation, and [who submits
8 ~~satisfactory evidence]~~ demonstrating to the satisfaction of the
9 board that the applicant has:

10 (1) successfully completed the academic
11 requirements of an educational program in occupational therapy
12 that is either:

13 (a) accredited by the American
14 occupational therapy association's accreditation council for
15 occupational therapy education; or

16 (b) in the case of a ~~[foreign-trained~~
17 ~~occupational therapist]~~ foreign educational program, accepted
18 by the [American] national board for certification in
19 occupational therapy [certification board] when the therapist
20 applies to take that board's examination;

21 (2) successfully completed a period of
22 supervised field work experience at a recognized educational
23 institution or a training program approved by the educational
24 institution where the ~~[registered]~~ occupational therapist or
25 the ~~[certified]~~ occupational therapy assistant has met the

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1 academic requirements of Paragraph (1) of this subsection;
2 provided that:

3 (a) an occupational therapist shall
4 complete a minimum of twenty-four weeks of supervised fieldwork
5 experience or satisfy any generally recognized past standards
6 that identified minimum fieldwork requirements at the time of
7 graduation; and

8 (b) an occupational therapy assistant
9 shall complete a minimum of sixteen weeks of supervised
10 fieldwork experience or satisfy any generally recognized past
11 standards that identified minimum fieldwork requirements at the
12 time of graduation;

13 (3) has passed an examination prescribed by
14 the [~~American~~] national board for certification in occupational
15 therapy [~~certification board~~] or the board [~~of examiners for~~
16 ~~occupational therapy~~]; and

17 (4) has no record of unprofessional conduct or
18 [~~incompetency~~] incompetence.

19 B. In the case of [~~a certified~~] an occupational
20 therapy assistant or a person practicing on a provisional
21 permit, the applicant shall file with the board a signed,
22 current statement of supervision by the [~~registered~~]
23 occupational therapist who will be the responsible supervisor.

24 C. The board shall verify, as necessary,
25 information contained on the completed application and any

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1 supporting documentation required to obtain a license."

2 Section 11. Section 61-12A-12 NMSA 1978 (being Laws 1996,
3 Chapter 55, Section 12) is amended to read:

4 "61-12A-12. EXAMINATIONS. --The board shall require proof
5 of passage of the [~~American~~] national board for certification
6 in occupational therapy [~~certification board~~] examination. The
7 board may require each applicant to pass an examination on the
8 state laws and rules [~~and regulations~~] that pertain to the
9 practice of occupational therapy."

10 Section 12. Section 61-12A-13 NMSA 1978 (being Laws 1996,
11 Chapter 55, Section 13) is amended to read:

12 "61-12A-13. PROVISIONAL PERMITS. --A provisional permit
13 may be granted to a person who has completed the education and
14 experience requirements of the Occupational Therapy Act. The
15 permit shall allow the person to practice occupational therapy
16 under the supervision of [~~a registered~~] an occupational
17 therapist. The provisional permit shall be valid until the
18 date on which the results of the next qualifying examination
19 have been made public. The provisional permit shall not be
20 renewed if the applicant has failed the examination. The board
21 shall verify, as necessary, information contained on the
22 completed application and any supporting documentation required
23 to obtain a license."

24 Section 13. Section 61-12A-14 NMSA 1978 (being Laws 1996,
25 Chapter 55, Section 14) is amended to read:

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1 "61-12A-14. LICENSURE BY ENDORSEMENT. -- Upon verification,
2 the board may grant a license to [~~any~~] an applicant who
3 presents a current license in good standing as [~~a registered~~]
4 an occupational therapist or [~~a certified~~] an occupational
5 therapy assistant in another state, the District of Columbia or
6 a territory of the United States that meets the requirements of
7 Section [~~11 of the Occupational Therapy Act~~] 61-12A-11 NMSA
8 1978. "

9 Section 14. Section 61-12A-20 NMSA 1978 (being Laws 1996,
10 Chapter 55, Section 20) is amended to read:

11 "61-12A-20. FUND CREATED. --

12 A. The "board of examiners for occupational therapy
13 fund" is created in the state treasury.

14 B. Money received by the board pursuant to the
15 Occupational Therapy Act, except fines, shall be deposited in
16 the fund. Money in the fund shall not revert to the general
17 fund at the end of any fiscal year.

18 C. The fund shall be administered by the board, and
19 money in the fund is appropriated solely to the board for the
20 purpose of meeting the necessary expenses incurred in carrying
21 out the provisions of the Occupational Therapy Act.
22 Expenditures from the fund shall be by warrant of the secretary
23 of finance and administration upon vouchers signed by the
24 president of the board or his authorized representative."

25 Section 15. Section 61-12A-24 NMSA 1978 (being Laws 1996,

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Chapter 55, Section 24, as amended) is amended to read:

"61-12A-24. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL. --The board of examiners for occupational therapy is terminated on July 1, [~~2005~~] 2015 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Occupational Therapy Act until July 1, [~~2006~~] 2016. Effective July 1, [~~2006~~] 2016, the Occupational Therapy Act is repealed. "

Section 16. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2005.